Title	ScheduleÂ 4â□□Sovereign immunity
Database	Bills & Legislation
Long Title	a Bill for an Act to amend the law relating to taxation, and for related purposes
Date	20-09-2018 12:45 PM
Source	House of Reps
Parl No.	45
Bill Number	195/18
Bill Type	Government
Portfolio	Treasury
Reps Bill Code	T
Status	Act
System Id	legislation/bills/r6192_first-reps/0004

ScheduleÂ 4â□□Sovereign immunity

Schedule 4â□□Sovereign immunity

Part 1â□□Amendments

Income Tax Assessment Act 1936

1 After section 99G

Insert:

99GA Amounts covered by sovereign immunity exemption

Subsection 98(3) does not apply to so much of the net income of a trust estate as represents income to which a beneficiary is presently entitled and gives rise to an amount that is nonâ□□assessable nonâ□□exempt income because of:

(a) Division 880 of the *Income Tax Assessment Act 1997*; or

(b) Division 880 of the *Income Tax (Transitional Provisions) Act 1997*.

2 At the end of subsection 128B(3)

Add:

; or (n) income that is nonâ□□assessable nonâ□□exempt income because of Division 880 of the *Income Tax Assessment Act 1997* or Division 880 of the *Income Tax (Transitional Provisions) Act 1997*.

Income Tax Assessment Act 1997

3 Section 9â□□1 (after table item 8)

Insert:

8A	A sovereign entity	section 880â□□55

4 Section 11â□□55 (table)

After:

small business assets		
	income arising from CGT event, company or trust owned asset continuously for 15 years.....	152â□□110(2)

insert:

sovereign entities	Subdivision 880â□□C

.....

5 At the end of section 840â□□805

Add:

(9) Subsections (2), (3) and (4) do not apply to you to the extent that the fund payment part relates to an amount that is *nonâ□□assessable nonâ□□exempt income of yours because of:

(a) Division 880; or

(b) Division 880 of the *Income Tax (Transitional Provisions) Act 1997*.

6 At the end of Part 4â□□5

Add:

Division 880â□□Sovereign entities and activities

Table of Subdivisions

880â□□A Basic concepts
880â□□B Basic tax treatment of sovereign entities
880â□□C Sovereign immunity
880â□□D Consular activities

Subdivision 880â□□Aâ□□Basic concepts

Guide to Subdivision 880â□□A

880â□□10 What this Subdivision is about

This Subdivision defines several terms that are fundamental to the operation of this Division, such as ***sovereign entity*** and ***sovereign entity group***.

Table of sections

Operative provisions

880â□□15 Meaning of sovereign entity
880â□□20 Meaning of sovereign entity group

Operative provisions

880â□□15 Meaning of *sovereign entity*

A ***sovereign entity*** is any of the following:

(a) a body politic of a foreign country, or a part of a foreign country;

(b) a *foreign government agency;

(c) an entity:

(i) in which an entity covered by paragraph (a) or (b) holds a *total participation interest of 100%; and

(ii) that is *not* an Australian resident; and

(iii) that is *not* a resident trust estate for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*.

880â□□20 Meaning of *sovereign entity group*

(1) Each of the following is part of a ***sovereign entity group***:

(a) a body politic of a foreign country (other than a body politic of a part of that foreign country);

(b) a *foreign government agency in relation to that foreign country (other than a foreign government agency in relation to a part of that foreign country);

(c) an entity:

(i) in which an entity covered by paragraph (a) or (b) holds a *total participation interest of 100%; and

(ii) that is *not* an Australian resident; and

(iii) that is *not* a resident trust estate for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*.

(2) Each of the following is part of a ***sovereign entity group***:

(a) a body politic of a part of a foreign country;

(b) a *foreign government agency in relation to that part of that foreign country;

(c) an entity:

(i) in which an entity covered by paragraph (a) or (b) holds a *total participation interest of 100%; and

(ii) that is *not* an Australian resident; and

(iii) that is *not* a resident trust estate for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*.

(3) Each entity that is part of a *sovereign entity group is a ***member*** of the group.

Subdivision 880â□□Bâ□□Basic tax treatment of sovereign entities

Guide to Subdivision 880â□□B

880â□□50 What this Subdivision is about

This Subdivision provides that a sovereign entity is liable to pay tax. It also provides that a body politic (or a foreign government agency) of a foreign country, or part of a foreign country, is treated as being a person that is not a resident of Australia, but is a resident of the foreign country.

Table of sections

Operative provisions

880â□□55 Sovereign entity liable to pay tax

880â□□60 Bodies politic of foreign countries and foreign government agencies treated as foreign residents

Operative provisions

880â□□55 Sovereign entity liable to pay tax

A *sovereign entity is liable to pay *tax.

Note: The actual amount of tax payable may be nil.

880â□□60 Bodies politic of foreign countries and foreign government agencies treated as foreign residents

(1) For the purposes of this Act, treat a body politic of a foreign country, or a part of a foreign country:

(a) as being a person that is not a resident of Australia; and

(b) as being a resident of the foreign country.

(2) For the purposes of this Act, treat a *foreign government agency in relation to a foreign country (including a foreign government agency in relation to a part of a foreign country):

(a) as being a person that is not a resident of Australia; and

(b) as being a resident of the foreign country.

Subdivision 880â□□Câ□□Sovereign immunity

Guide to Subdivision 880â□□C

880â□□100 What this Subdivision is about

This Subdivision provides a tax exemption for certain sovereign entities in respect of certain returns on membership interests (etc.) in entities that are Australian resident companies or managed investment trusts. To obtain this exemption, the relevant sovereign entity group can hold only a portfolio interest in the entity, and cannot have relevant influence over the entity.

Table of sections

Operative provisions

880â□□105 Sovereign entityâ□□s income from membership interest etc. in trust or companyâ□□nonâ□□assessable nonâ□□exempt income

880â□□110 Sovereign entityâ□□s deduction from membership interest etc.â□□loss not deductible

880â□□115 Sovereign entityâ□□s capital gain from membership interest etc.â□□gain disregarded

880â□□120 Sovereign entityâ□□s capital loss from membership interest etc. in trust or companyâ□□loss disregarded

880â□□125 Covered sovereign entities

880â□□130 Meaning of public nonâ□□financial entity and public financial entity

Operative provisions

880â□□105 Sovereign entityâ□□s income from membership interest etc. in trust or companyâ□□nonâ□□assessable nonâ□□exempt income

(1) An amount of *ordinary income or *statutory income of a *sovereign entity is not assessable income and is not *exempt income if:

(a) the sovereign entity is covered by section 880â□□125; and

(b) the amount is a return on any of the following kinds of interest that the sovereign entity holds in another entity (the ***test entity***):

(i) a *membership interest;

(ii) a *debt interest;

(iii) a *nonâ□□share equity interest; and

(c) the test entity is:

(i) a company that is an Australian resident at the time (the ***income time***) when the amount becomes ordinary or statutory income of the sovereign entity; or

(ii) a *managed investment trust in relation to the income year in which the income time occurs; and

(d) the *sovereign entity group of which the sovereign entity is a member satisfies the portfolio interest test in subsection (4) in relation to the test entity:

(i) at the income time; and

(ii) throughout any 12 month period that began no earlier than 24 months before that time and ended no later than that time; and

(e) the sovereign entity group of which the sovereign entity is a member does not

have influence of a kind described in subsection (6) in relation to the test entity at the income time.

(2) For the purposes of paragraph (1)(b), treat an interest that a *sovereign entity holds in another entity as a partner in a *partnership as not being an interest that the sovereign entity holds in the other entity.

(3) If the amount is a *fund payment, subsection (1) does not apply to the extent that the amount is attributable to:

(a) *nonâ□□concessional MIT income (see section 12â□□435 in Schedule 1 to the *Taxation Administration Act 1953*); or

(b) an amount that would be nonâ□□concessional MIT income if the following provisions were disregarded:

(i) subsection 12â□□437(5) in that Schedule;

(ii) sections 12â□□440, 12â□□447, 12â□□449 and 12â□□451 in that Schedule.

Portfolio interest test

(4) A *sovereign entity group satisfies the portfolio interest test in this subsection in relation to the test entity at a time if, at that time, the sum of the *total participation interests that each *member of the group holds in the test entity:

(a) is less than 10%; and

(b) would be less than 10% if, in working out the *direct participation interest that any entity holds in a company:

(i) an *equity holder were treated as a shareholder; and

(ii) the total amount contributed to the company in respect of *nonâ□□share equity interests were included in the total paidâ□□up share capital of the company.

(5) For the purposes of subsection (4), in working out the sum of the *total participation interests held by each *member of the group in the test entity, take into account:

(a) a particular *direct participation interest; or

(b) a particular *indirect participation interest;

held in the entity only once if it would otherwise be counted more than once.

Influence test

(6) A *sovereign entity group has influence of a kind described in this subsection in relation to the test entity at a time if any of the following requirements are satisfied at that time:

(a) a *member of the group:

(i) is directly or indirectly able to determine; or

(ii) in acting in concert with others, is directly or indirectly able to determine;

the identity of at least one of the persons who, individually or together with others, make (or might reasonably be expected to make) the decisions that comprise the control and direction of the test entityâ□□s operations;

(b) at least one of those persons is accustomed or obliged to act, or might reasonably be expected to act, in accordance with the directions, instructions or wishes of a member of the group (whether those directions, instructions or wishes are expressed directly or indirectly, or through the member acting in concert with others).

(7) However, a *sovereign entity group does not have influence of a kind described in subsection (6) if, disregarding any breach of terms of a *debt interest by any entity, the sovereign entity group would not have influence of that kind.

(8) For the purposes of subsection (6), in working out whether an entity is a *member of a *sovereign entity group, treat the references in paragraphs 880â□□20(1)(c) and (2)(c) to 100% as instead being references to more than 50%.

880â□□110 Sovereign entityâ□□s deduction from membership interest etc.â□□loss not deductible

A *sovereign entity cannot deduct an amount if:

(a) the sovereign entity is covered by section 880â□□125; and

(b) the amount is a loss in respect of any of the following kinds of interest that the sovereign entity holds in another entity:

(i) a *membership interest;

(ii) a *debt interest;

(iii) a *nonâ□□share equity interest; and

(c) the requirements in paragraphs 880â□□105(1)(c), (d) and (e) would be satisfied, on the assumptions that:

(i) the amount were *ordinary income or *statutory income; and

(ii) the amount became ordinary income or statutory income of the sovereign entity at the time it arose; and

(iii) references in those paragraphs to the test entity were references to the other entity mentioned in paragraph (b) of this section.

880â□□115 Sovereign entityâ□□s capital gain from membership interest etc.â□□gain disregarded

Disregard a *capital gain of a *sovereign entity from a *CGT event that happens in relation to a *CGT asset if:

(a) the sovereign entity is covered by section 880â□□125; and

(b) the CGT asset is a *membership interest, *nonâ□□share equity interest or *debt interest in another entity; and

(c) the requirements in paragraphs 880â□□105(1)(c), (d) and (e) would be satisfied, on the assumptions that:

(i) the capital gain were an amount of *ordinary income or *statutory income; and

(ii) the amount mentioned in subparagraph (i) became ordinary income or statutory income of the sovereign entity immediately before the time the CGT event happened; and

(iii) references in those paragraphs to the test entity were references to the other entity mentioned in paragraph (b) of this section.

880â□□120 Sovereign entityâ□□s capital loss from membership interest etc. in trust or companyâ□□loss disregarded

Disregard a *capital loss of a *sovereign entity from a *CGT event that happens at a time if, on the assumption that the loss were a *capital gain that happened at that time, the capital gain would be disregarded because of section 880â□□115.

880â□□125 Covered sovereign entities

A *sovereign entity is covered by this section if it satisfies all of the following requirements:

(a) the entity is funded solely by public monies;

(b) all returns on the entityâ□□s investments are public monies;

(c) the entity is *not* a partnership;

(d) the entity is *not* any of the following:

(i) a *public nonâ□□financial entity;

(ii) a *public financial entity (other than a public financial entity that only carries on central banking activities).

880â□□130 Meaning of *public nonâ□□financial entity* and *public financial entity*

(1) An entity is a ***public nonâ□□financial entity*** if its principal activity is either or both of the following:

(a) producing or trading nonâ□□financial goods;

(b) providing services that are not financial services.

(2) An entity is a ***public financial entity*** if any of the following requirements are satisfied:

(a) it trades in financial assets and liabilities;

(b) it operates commercially in the financial markets;

(c) its principal activities include providing any of the following financial services:

(i) financial intermediary services, including depositâ□□taking and insurance services;

(ii) financial auxiliary services, including brokerage, foreign exchange and investment management services;

(iii) capital financial institution services, including financial services in relation to assets or liabilities that are not available on open financial markets.

Subdivision 880â□□Dâ□□Consular activities

Guide to Subdivision 880â□□D

880â□□200 What this Subdivision is about

This Subdivision provides a tax exemption for income of an entity that arises from its consular functions.

Table of sections

Operative provisions

880â□□205 Income from consular functionsâ□□nonâ□□assessable nonâ□□exempt income

Operative provisions

880â□□205 Income from consular functionsâ□□nonâ□□assessable nonâ□□exempt income

An amount of *ordinary income or *statutory income of an entity is not assessable income and is not *exempt income if the income arises from the entityâ□□s consular functions.

Part 2â□□Application and transitional provisions

Income Tax (Transitional Provisions) Act 1997

7 At the end of Part 4â□□5

Add:

Division 880â□□Sovereign entities and activities

Table of sections

880â□□1 Application of Division 880 of the Income Tax Assessment Act 1997
880â□□5 Certain income of sovereign entity in respect of a scheme is nonâ□□assessable nonâ□□exempt income if covered by a private ruling
880â□□10 Certain amounts of sovereign entity in respect of a scheme are not deductible if covered by a private ruling
880â□□15 Sovereign entityâ□□s capital gain from membership interest etc.â□□gain disregarded
880â□□20 Sovereign entityâ□□s capital loss from membership interest etc.â□□loss disregarded
880â□□25 Asset of sovereign entityâ□□deemed sale and purchase

880â□□1 Application of Division 880 of the *Income Tax Assessment Act 1997*

Division 880 of the *Income Tax Assessment Act 1997* applies to the 2019â□□20 income year and later income years.

880â□□5 Certain income of sovereign entity in respect of a scheme is nonâ□□assessable nonâ□□exempt income if covered by a private ruling

An amount of ordinary income or statutory income of a sovereign entity for an income year is not assessable income and is not exempt income if:

(a) the amount is a return on an investment asset under a scheme; and

(b) the sovereign entity acquired the investment asset on or before 27 March 2018 under the scheme; and

(c) on or before 27 March 2018, the sovereign entity applied for a private ruling in relation to the scheme; and

(d) before 1 July 2026, the Commissioner gave the entity a private ruling confirming that income from the investment asset was not subject to income tax, or withholding tax, because of the doctrine of sovereign immunity; and

(e) the private ruling applied during at least part of the period:

(i) starting on 27 March 2018; and

(ii) ending before 1 July 2026;

regardless of whether the private ruling started to apply before 27 March 2018, or ceased to apply before 1 July 2026; and

(f) the scheme carried out is not materially different to the scheme specified in the private ruling; and

(g) the income year is:

(i) unless subparagraph (ii) appliesâ□□the 2025â□□26 income year or an earlier income year; or

(ii) if the last income year to which the private ruling relates is a later income year than the 2025â□□26 income yearâ□□that later income year, or an earlier income year.

880â□□10 Certain amounts of sovereign entity in respect of a scheme are not deductible if covered by a private ruling

A sovereign entity cannot deduct an amount for an income year if:

(a) the amount is a loss in respect of an investment asset under a scheme; and

(b) the requirements in paragraphs 880â□□5(b) to (g) are satisfied.

880â□□15 Sovereign entityâ□□s capital gain from membership interest etc.â□□gain disregarded

Disregard a capital gain of a sovereign entity from a CGT event that happens in relation to a CGT asset if:

(a) the capital gain arises under a scheme; and

(b) the CGT asset is a membership interest, nonâ□□share equity interest or debt interest in another entity; and

(c) the requirements in paragraphs 880â□□5(b) to (g) are satisfied (on the assumption that references in those paragraphs to the investment asset were references to the CGT asset).

880â□□20 Sovereign entityâ□□s capital loss from membership interest etc.â□□loss disregarded

Disregard a capital loss of a sovereign entity from a CGT event that happens at a time if, on the assumption that the loss were a capital gain that happened at that time, the capital gain would be disregarded because of section 880â□□15.

880â□□25 Asset of sovereign entityâ□□deemed sale and purchase

(1) This section applies if:

(a) a sovereign entity acquired an asset (other than money) on or before 27 March 2018 under a scheme; and

(b) on or before 27 March 2018, the sovereign entity applied for a private ruling in relation to the scheme; and

(c) before 1 July 2026, the Commissioner gave the entity a private ruling confirming that income from the asset was not subject to income tax, or withholding tax, because of the doctrine of sovereign immunity; and

(d) the private ruling applied during at least part of the period:

(i) starting on 27 March 2018; and

(ii) ending before 1 July 2026;

regardless of whether the private ruling started to apply before 27 March 2018, or ceased to apply before 1 July 2026; and

(e) the sovereign entity holds the asset on the day mentioned in subsection (5).

(2) For the purposes mentioned in subsection (3), the sovereign entity is taken:

(a) to have disposed of the asset, immediately before the day mentioned in subsection (5), for a consideration equal to its market value; and

(b) to have acquired the asset again, immediately after the disposal mentioned in paragraph (a), for a consideration equal to the higher of the following:

(i) its market value immediately before that disposal;

(ii) its cost base immediately before that disposal.

(3) The purposes are as follows:

(a) the purposes of Parts 3â□□1 and 3â□□3 of the *Income Tax Assessment Act 1997*;

(b) if the asset is a revenue assetâ□□determining whether an amount is included in, or can be deducted from, the assessable income of the entity.

(4) Despite subsection (3):

(a) disregard any capital gain or capital loss the sovereign entity makes because of the disposal mentioned in paragraph (2)(a); or

(b) if the asset is a revenue assetâ□□disregard any amount that could (apart from this subsection) be included in, or be deducted from, the assessable income of the entity as a result of that disposal.

(5) For the purposes of paragraphs (1)(e) and (2)(a), the day is:

(a) unless paragraph (b) appliesâ□□the later of the following days:

(i) 1 July 2026;

(ii) the day before the private ruling ceases to apply; or

(b) a day earlier than the day mentioned in paragraph (a), if:

(i) the scheme mentioned in paragraph (1)(a) is not, when it is first carried out, materially different to the scheme specified in the private ruling; and

(ii) it becomes, on the earlier day, materially different to the scheme specified in the private ruling.

Part 3â□□Definitions

Income Tax Assessment Act 1997

8 Subsection 995â□□1(1) (before paragraph (c) of the definition of *member*)

Insert:

(be) in relation to a *sovereign entity groupâ□□has the meaning given by section 880â□□20; and

9 Subsection 995â□□1(1)

Insert:

public financial entity has the meaning given by section 880â□□130.

public nonâ□□financial entity has the meaning given by section 880â□□130.

sovereign entity has the meaning given by section 880â□□15.

sovereign entity group has the meaning given by section 880â□□20.